VERNON F. MILLER

IBLA 88-308 Decided July 6, 1989

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring placer mining claims F-85888 through F-85899 null and void ab initio.

Affirmed.

1. Alaska: Land Grants and Selections--Mining Claims: Lands Subject to--Mining Claims: Relocation--Mining Claims: Withdrawn Land--Segregation--Withdrawals and Reservations: State Selections

   BLM may properly declare a mining claim located on land segregated from mineral entry, pursuant to 43 CFR 2627.4(b), by virtue of the filing of an Alaska State selection application, null and void ab initio when there is no showing that the claim relates back to a date of location prior to the segregation.

2. Alaska: Land Grants and Selections--Mining Claims: Lands Subject to--Mining Claims: Relocation--Mining Claims: Withdrawn Land--Segregation--Withdrawals and Reservations: State Selections

   Sec. 906(e) of ANILCA, 43 U.S.C. § 1635(e) (1982), amended the Alaska Statehood Act to permit the State to file new applications to include lands which were not vacant, unappropriated, and unreserved at the time the sec. 906(e) "top filing" application was filed. Such State selection applications become an effective selection upon the date the lands become available within the meaning of the Alaska Statehood Act. Lands subject to valid mining claims on the date a state "top filing" application is filed become subject to state selection when the claims are abandoned, either intentionally or by action of law.

3. Mining Claims: Relocation

> In order to show that the documents filed subsequent to withdrawal of the land from mineral entry are intended to be amendments of claims located prior to withdrawal, the claimant must establish that the documents he filed were notices of amendment of mineral claims located prior to the withdrawal and that those claims were in good standing on the date of amendment. Without such proof, BLM may properly conclude that the claimant relocated the claims and had no rights by relation back to a prior claim.

APPEARANCES: Vernon F. Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Vernon F. Miller (Miller) has appealed from a February 5, 1988, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring placer mining claims F-85888 through F-85899 null and void ab initio. 1/

On January 19, 1988, BLM received 12 documents submitted by Miller pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). These documents, which were titled "Relocation of Mining Claim," each stated that Miller had relocated a placer mining claim on either January 13 or January 14, 1988. These claims were described as being situated in secs. 2, 22, and 27, T. 30 N., R. 10 W., secs. 21, 27, 28, 33, and 34, T. 31 N., R. 10 W., and secs. 13, 14, 15, and 22, T. 30 N., R. 11 W., Fairbanks Meridian, Alaska. The land described in Miller's relocation certificates is the subject of State selection applications F-85358, F-85360, and F-85361, filed on June 24, 1986, pursuant to the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-52).

In its February 5, 1988, decision BLM declared Miller's mining claims null and void ab initio because they had been located after the land had been segregated from mineral entry pursuant to 43 CFR 2627.4(b). Miller appealed from this decision.

In his statement of reasons for appeal, Miller admits that 43 CFR 2627.4(b) segregates the land when the State files a selection but contends that the lands were not available for selection at the time of the State selection. According to Miller, the State selection was made subject to valid existing rights in existence at the time of entry. He then states that the land described in the State selection was subject to claims located prior to June 24, 1986, and was therefore excluded from the State selection. Appellant states that valid relocation notices for the claims were filed and recorded with the appropriate land office and recording district, and received by BLM on January 19, 1988.

1/ Further information regarding the claims is found at Appendix A to this decision.

[1] It is well established that BLM properly declares unpatented mining claims null and void ab initio if the claims are located when the lands were closed to mineral entry by virtue of the existence of a valid State selection application at the time of location. See 43 CFR 2627.4(b); Ed Bilderback, 90 IBLA 319 (1986); Thomas C. Bay, 87 IBLA 194 (1985).

[2] Appellant's statement of reasons raises two possible arguments for reversing BLM's decision. We will address the first, assuming the documents he filed accurately describe his intent. A long-standing rule of law is that a relocation is equivalent to a new location and does not relate back to the initial date of location. Cheesman v. Shreeve, 40 F. 787 (C.C. Colo. 1889). This being the case, the only way that the new locations could be held to have been on lands open to mineral entry would be if the same lands were subject to claims at the time of the State selection and the State selection would not apply to lands subsequently open to selection. However, this is not the case.

Section 906(e) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1635(e) (1982), permits the State to

> file future selection applications and amendments thereto * * * for lands which are not, on the date of filing of such applications, available [for selection under the Alaska Statehood Act]. Each such selection application, if otherwise valid, shall become an effective selection * * * upon the date the lands become available within the meaning of [the Alaska Statehood Act] regardless of whether such date occurs before or after expiration of the State's land selection rights.

On June 24, 1986, the State filed the selection applications to take advantage of the provisions of section 906(e) of ANILCA. This section amended the Statehood Act to permit the State to file new applications to include lands which were not vacant, unappropriated, and unreserved at the time the section 906(e) "top filing" application was filed. Section 906(e) provides that the State selection applications shall become an effective selection upon the date the lands become available within the meaning of the Alaska Statehood Act. The June 24, 1986, State selection, made under section 906(e), incorporated the lands in question if the lands became available for selection within the meaning of the Alaska Statehood Act on or after June 24, 1986. Assuming, because the record does not contain any evidence to the contrary, that the lands were subject to valid mining claims on June 24, 1986, the lands became subject to the State selection when the claims were abandoned, either intentionally or by action of law. 2/ If, on the other hand, the claims were not abandoned, the land was not available for mineral entry at the time of appellant's relocation.

[3] Implicit in our second interpretation of appellant's argument is the assumption that the mining claim relocations submitted to BLM on

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2/ When a mining claimant fails to submit the annual filings under 43 U.S.C § 1744 (1982), his claim is conclusively presumed abandoned and void. There need be no intent to abandon.

January 19, 1988, were, in fact, amendments to claims located prior to the State selection. However, there is nothing on the face of the relocation notices 3/ and appellant has provided no evidence that the 1988 documents were amendments of mineral locations made prior to June 24, 1986, which were in good standing when the "relocations" intended to be "amendments" were filed. In order to show that his rights were established prior to the 1986 State land selections, appellant must establish that the 1988 documents were notices of amendment of claims located prior to the State selections, and that those claims were in good standing on the date of amendment. See Russell Hoffman (On Reconsideration), 87 IBLA 146 (1985). Therefore, without such proof, BLM may properly conclude that when appellant relocated the claims he had no rights by relation back to a prior claim. See Cheesman v. Shreeve, supra; Henry J. Hudspeth, Sr., 78 IBLA 235 (1984).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

3/ An amended location notice will typically be tied to the initial location by reference to the book and page of recordation or the mining claim recordation number for the initial location notice. Nothing on the face of the document filed by Miller gave any such indication.

APPENDIX

BLM SERIAL NUMBER	CLAIM NAME	TOWNSHIP & RANGE	STATE SERIAL MERIDIAN	SELECTION NUMBERS
F-85888	Rainbows Ends	30 N., 10 W., Sec. 2	Fairbanks	F-85361
F-85889	Small Change	31 N., 10 W., Secs. 21, 27, & 28	Fairbanks	F-85358
F-88590	Small Change 2	31 N., 10 W., Secs. 21, 27, & 28	Fairbanks	F-85358
F-85891	Two Bit	30 N., 11 W., Sec. 22	Fairbanks	F-85360
F-85892	Two Bit 2	30 N., 10 W., Secs. 22 & 27	Fairbanks	F-85361
F-85893	Red Nugget	31 N., 10 W., Secs. 33 & 34	Fairbanks	F-85358
F-85894	Berr-den 4	30 N., 11 W., Sec. 14	Fairbanks	F-85360
F-85895	Berr-den 5	30 N., 11 W., Sec. 14	Fairbanks	F-85360
F-85896	Berr-den 2	30 N., 11 W., Sec. 14	Fairbanks	F-85360
F-85897	Berr-den 1	30 N., 11 W., Sec. 15	Fairbanks	F-85360
F-85898	Berr-den	30 N., 11 W., Sec. 13	Fairbanks	F-85360
F-85899	Ber-den	30 N., 11 W., Sec. 14	Fairbanks	F-85360